

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

City of Attleboro, Massachusetts;

Avnet, Inc.; Bank of America,

N.A., Trustee u/w of Lloyd G. Balfour;

BASF Catalysts LLC (f/k/a Engelhard

Corporation); Chevron Environmental

Management Company, for itself and on

behalf of Kewanee Industries, Inc.;

Conoco Phillips Company; Handy &

Harman; International Paper Company;

KIK Custom Products, Inc. (f/k/a CCL

Custom Manufacturing, Inc.); Town of

Norton, Massachusetts; Swank, Inc.;

Teknor Apex Co.; Texas Instruments

Incorporated; and Waste Management of

Massachusetts, Inc.

Defendants.

CIVIL ACTION NO. \_\_\_\_\_

**COMPLAINT**

The United States of America, by authority of the Attorney General of the United States, and through the undersigned counsel, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this Complaint and avers as follows:

**NATURE OF THE ACTION**

1. This is a civil action brought pursuant to Sections 106, 107, and 113(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9606, 9607, and 9613(b). The United States seeks injunctive relief

requiring Defendants to perform the certain response actions selected in EPA's Record of Decision relating to the Shpack Landfill Superfund Site (the "Site") dated September 30, 2004. The United States also seeks to recover certain costs incurred or to be incurred by EPA in connection with the release or threatened release of hazardous substances into the environment at or from the Shpack Landfill Superfund Site located in both Norton and Attleboro, Massachusetts.

### **JURISDICTION AND VENUE**

2. This Court has jurisdiction over the subject matter of this action and over Defendants pursuant to Sections 106(a), 107(a), and 113(b) of CERCLA, 42 U.S.C. §§ 9606(a), 9607(a), and 9613(b), and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this judicial district pursuant to Sections 106(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9606(a), 9613(b), and 28 U.S.C. §§ 1391(b), 1391(c) and 1395, because the claims arose, and the threatened or actual releases of hazardous substances occurred, in this district.

### **DEFENDANTS**

4. The City of Attleboro, Massachusetts is a municipality with a principal place of business at City Hall, 77 Park Street, Attleboro, MA.

5. Avnet, Inc. is an Arizona corporation with a principal place of business at 32211 S. 47<sup>th</sup> St., Phoenix, AZ.

6. Bank of America, N.A., as Trustee u/w of Lloyd G. Balfour, is a corporation with a principal place of business at 100 Federal St., Boston, MA.

7. BASF Catalysts LLC (f/k/a Engelhard Corporation), is a Delaware Limited Liability Company with a principal place of business at 100 Compus Drive, Florham Park, NJ.

8. ConocoPhillips, Co., is a Delaware corporation with a principal place of business at 600 North Dairy Ashford Road, Houston, TX.

9. Chevron Environmental Management Company is a California corporation with a principal place of business at 6001 Bollinger Canyon Road, San Ramon, CA.

10. Kewanee Industries, Inc. is a Delaware corporation with a principal place of business at Gulf Building, Pittsburgh, PA.

11. Handy & Harman Refining Group, Inc., is a Connecticut corporation with a principal place of business at 300 Rye Street, South Windsor, CT.

12. International Paper, Co., is a New York corporation with a principal place of business at 6400 Poplar Avenue, Memphis, TN.

13. KIK Custom Products, Inc. (f/k/a CCL Custom Manufacturing, Inc.), is a corporation with a principal place of business at 225 Franklin Street, Boston, MA. KIK Custom Products, Inc. is the successor to Puritan Aerosol, Inc., a company that contributed hazardous waste to the Site.

14. The Town of Norton, Massachusetts is a municipality with a principal place of business at 70 East Main Street, Norton, MA.

15. Swank, Inc., is a Delaware corporation with a principal place of business at 656 Joseph Warner Boulevard, Taunton, MA.

16. Tenor Apex Company, is a Delaware corporation with a principal place of business at 505 Central Avenue, Pawtucket, RI.

17. Texas Instruments, Inc., is a Delaware corporation with a principal place of business at 12500 TI Boulevard, Dallas, TX.

18. Waste Management of Massachusetts, Inc., is a Massachusetts corporation with a principal place of business at 195 Wayside Ave., Westfield, MA.

### **STATUTORY BACKGROUND**

19. CERCLA was enacted in 1980 to provide a comprehensive governmental mechanism for abating releases and threatened releases of hazardous substances and other pollutants and contaminants, and for funding the costs of such abatement and related enforcement activities, which are known as "response" actions. 42 U.S.C. §§ 9604(a), 9601(25).

20. Under Section 104(a)(1) of CERCLA, as amended:

(1) Whenever (A) any hazardous substance is released or there is a substantial threat of such a release into the environment, or (B) there is a release or substantial threat of release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, the President is authorized to act, consistent with the national contingency plan, to remove or arrange for the removal of, and provide for remedial action relating to such hazardous substance, pollutant, or contaminant at any time (including its removal from any contaminated natural resource), or take any other response measure consistent with the national contingency plan which the President deems necessary to protect the public health or welfare or the environment . . . .

42 U.S.C. § 9604(a)(1).

21. Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), provides, in addition to the President's authority to undertake response actions under Section 104 of CERCA, that:

[W]hen the President determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility, he may . . . secure such relief as may be necessary to abate such danger or threat . . . .

22. For CERCLA response actions and enforcement purposes, the Administrator of EPA is the President's delegate, as provided in operative Executive Orders, and, within certain

limits, the Regional Administrators of EPA have been re-delegated this authority.

23. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides in pertinent part:

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this Section- -

- (1) the owner and operator of a vessel or a facility,
- (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of, [and]
- (3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances, . . . .

\* \* \*

shall be liable for - -

- (A) all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan;
- (B) any other necessary costs of response incurred by any other person consistent with the national contingency plan; [and]
- (C) damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such a release . . .

#### SITE DESCRIPTION AND FACTUAL BACKGROUND

24. The Site is approximately 9.4 acres and consists of two parcels of land located on the Norton/Attleboro, Massachusetts town boundary, on the southerly side of Union Road in Norton and Peckham Street in Attleboro. The Site includes both the "Shpack Parcel" in Norton and the "Dumont Parcel" in Attleboro.

25. The Shpack Parcel, which consists of approximately 6.0 acres situated in Norton, is bounded by the Union Road and the former Shpack residence to the northwest, Chartley Swamp to the east/southeast, and the Norton-Attleboro corporate boundary to the south/southwest.

26. The Dumont Parcel, which consists of approximately 3.4 acres located in Attleboro, is a triangular shaped parcel bounded by Peckham Street to the north/northwest, the Attleboro-Norton town line to the east/northeast, and a line between Peckham Street and the Attleboro-Norton town line to the south..

27. The Dumont Parcel portion of the Site was operated as an open burning dump for the City of Attleboro from approximately 1946 through 1965.

28. The Shpack Parcel portion of the Site received hazardous substances and other waste from approximately 1946 through 1975.

29. Bulldozers periodically leveled the land on the Dumont Parcel without strict adherence to property boundaries, causing the wastes originally disposed on each of the two contiguous parcels to become commingled.

30. Contaminants have been detected in the soils and groundwater at the Site, including, but not limited to, the following: volatile organic compounds ("VOCs"); semi-volatile organic compounds ("SVOCs"); polychlorinated biphenyls ("PCBs"); heavy metals, such as lead, arsenic, chromium, copper, cadmium, nickel, and zinc; and radiological compounds.

31. The contaminants referred to in Paragraph 31 are "hazardous substances" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

32. In May 1982, the Town of Norton requested that EPA perform further chemical

testing at the Site after assessments by the Massachusetts Department of Environmental Quality Engineering had revealed lead, arsenic, chromium, copper, cadmium, nickel, and zinc at elevated levels. EPA conducted a site investigation of soil, groundwater, surface water, and at least one residential well.

33. The Site was placed on the National Priorities List ("NPL"), 40 C.F.R. Part 300, Appendix B, in June 1986. The NPL is a national list of hazardous waste sites posing the greatest threat to health, welfare, and the environment. The NPL has been established pursuant to Section 105(a) of CERCLA, 42 U.S.C. § 9605(a).

34. In 1990, EPA entered into an Administrative Order on Consent ("AOC") with a group of Potentially Responsible Parties ("PRPs") who agreed to perform the Remedial Investigation/Feasibility Study ("RI/FS") pursuant to CERCLA and the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), promulgated pursuant to Section 105(a) of CERCLA, 42 U.S.C. § 9605(a), and codified at 40 C.F.R. Part 300

35. Between 1991 and 1992, the PRPs performed a field study and wrote a preliminary study report on non-radiological contamination at the Site.

36. In 2002, special legislation was enacted requiring the Army Corps of Engineers to undertake cleanup of radiological contamination at the Site pursuant to the Formerly Utilized Sites Remedial Action Program ("FUSRAP"). *See*, Department of Defense and Emergency Supplemental Appropriations for Recovery from and Response to Terrorists Attacks on the United States Act, Pub. L. No. 107-117, § 8143, 115 Stat. 2230, 2279-80 (2002).

37. The special legislation enacted in 2002 did not require the Army Corps of Engineers to cleanup non-radiological contamination at the Site.

38. Between 2002 and 2003, the PRP group performed the RI/FS relating to non-radiological contamination under EPA oversight pursuant to CERCLA and the NCP, 40 C.F.R. Part 300, and on June 17, 2004, it issued a feasibility study report ("FS Report"). The FS Report presented the remedial alternatives evaluated to address Site conditions and potential risks.

39. In June 2004, EPA issued a proposed plan (the "Proposed Plan") for remedial action at the Site. After a notice and comment period, the remedial action plan was finalized in a detailed Record of Decision ("ROD") for the Site which was issued on September 30, 2004.

40. As a result of the release or the substantial threat of release of hazardous substances into the environment, EPA has undertaken response actions at or in connection with non-radiological contamination at the Site under Section 104 of CERCLA, 42 U.S.C. § 9604, and will undertake response actions in the future.

41. These costs have been incurred consistent with the NCP, 40 C.F.R. Part 300.

#### **GENERAL FACTUAL ALLEGATIONS**

42. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

43. Each of the Defendants is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

44. There have been releases, within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), and threatened releases, of hazardous substances into the environment at or from the Site.

45. As a result of the releases or threatened releases of hazardous substances at or from the Site, EPA has incurred and will continue to incur response costs, within the meaning of



Sections 101(25) and 107 of CERCLA, 42 U.S.C. §§ 9601(25) and 9607, to respond to the releases or threatened releases of hazardous substances at the Site. EPA will continue to incur response costs in connection with the Site.

46. The response actions taken and to be taken at the Site are not inconsistent with the NCP.

47. Defendants are liable for EPA's unrecovered past response costs incurred in connection with the Site, and additional response costs EPA may incur in connection with the Site.

#### **FIRST CLAIM FOR RELIEF**

48. Paragraphs 1 through 47 are realleged and incorporated herein by reference.

49. Defendants Avnet, Inc.; Bank of America, N.A., Trustee u/w of Lloyd G. Balfour; BASF Catalysts LLC (f/k/a Engelhard Corporation); Chevron Environmental Management Company, for itself and on behalf of Kewanee Industries, Inc.; ConocoPhillips Company; Handy & Harman; International Paper Company; KIK Custom Products, Inc. (f/k/a CCL Custom Manufacturing Inc.; Swank, Inc.; Teknor Apex Co.; Texas Instruments, Inc.; and Waste Management of Massachusetts, Inc. are persons, or successors in interest to persons, who by contract, agreement or otherwise, arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, which were disposed of at the Site.

50. Defendants Waste Management of Massachusetts, Inc. and the City of Attleboro, Massachusetts are persons, or successors in interest to persons who, at the time of the disposal of hazardous substances was an operator of the Site.

51. Defendant Town of Norton is the current owner of a portion of the Site.

52. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), Defendants are liable to the United States for all response costs incurred and to be incurred by EPA in connection with the Site.

### **SECOND CLAIM FOR RELIEF**

53. Paragraphs 1 through 47 are realleged and incorporated herein by reference.

54. Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), provides in relevant part:

[W]hen the President determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility, he may . . . secure such relief as may be necessary to abate such danger or threat . . . .

55. The President, through his delegate, the Regional Administrator of EPA Region I, has determined that there is or may be an imminent and substantial endangerment to the public health or welfare or the environment because of a release or threatened release of a hazardous substance at and from the Site.

56. Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), authorizes the United States to bring an action to secure such relief as may be necessary to abate the danger or threat at the Site.

57. EPA has determined that the remedy selected in the September 30, 2004 ROD is necessary to abate the danger or threat at the Site in terms of source control and management of the migration of contamination.

58. The Defendants are jointly and severally liable to undertake the remedial action relating to non-radiological contamination identified in the ROD, which actions EPA has determined are necessary to abate the danger or threat at the Site.

## PRAYER FOR RELIEF

Wherefore, Plaintiff, the United States of America, prays that this Court:

- A. Order Defendants, jointly and severally, to perform the remedial action for non-radiological contamination at the Shpack Dump Superfund Site selected by EPA in the Record of Decision dated September 30, 2004;
- B. Order Defendants to reimburse the United States for all response costs incurred and to be incurred by EPA in connection with the Site, including interest thereon;
- C. Award the United States its costs and fees in this action; and
- D. Grant the United States such other relief as the Court deems just and proper.

Respectfully submitted,

MICHAEL GUZMAN  
Principal Deputy Assistant Attorney General  
Environment and Natural Resources Division  
United States Department of Justice

DATE: <sup>PC</sup> 12/8, 2008

By:

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